IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

(1)First Appeal No. 364 of 1990

1. The Pune Municipal Transport
   through Transport Manager

2. Kashinath Gopal Dhole ..Appellants

vs.

1. Smt.Amruta Arun Beknalkar
2. The Oriental Fire and General
   Insurance Company
3. Shri Govind Anant Beknalkar
4. Smt.Sushila alias Nalini Govind
   Beknalkar
5. Vidya alias Jayashri Govind
   Beknalkar
6. Bhagwan alias Dattatraya Govind
   Beknalkar ..Respondents

Shri R.G.Ketkar for appellants
Shri P.B.Shah with Shri Vivek Salunke for
respondent
no.1. Shri Nitin V.Gangal for respondent no.2
Shri D.A.Nalavade for respondent nos.3 to 6.

(2) First Appeal No. 674 of 1990

1. Shri Govind Anant Beknalkar
2. Sou.Nalini Govind Beknalkar
3. Miss Jayashree Govind Beknalkar
4. Shri Dattatraya Govind Beknalkar ..Appellants

vs.

1. Shri Kashinath Gopal Dhole
2. Pune Municilal Transport, Pune
3. The Oriental Insurance Company
   Limited, Pune
4. Smt.Amruta Arun Beknalkar ..Respondents

Shri D.A.Nalavade for appellants.
Shri R.G.Ketkar for respondent nos.1 and 2
Shri Nitin V.Gangal for respokndent no.3
Shri P.B.Shah with Shri Vivek Salunke for
respondent no.4.

CORAM: S.B.MHASE J.
11th August,2006

ORAL JUDGMENT:

. Heard the learned Counsel for the parties.

2. These two appeals are directed against the judgment and Award passed by the Member, Motor Accident Claims Tribunal, Pune in Application Nos.96 of 1986 and 141 of 1986 decided on 6th March, 1990.

3. The matter pertains to the compensation to be awarded on the death of deceased Arun Govind Beknalkar who died on 23rd August, 1985 in the motor accident. On 23rd August, 1985 at about 4.30 p.m. deceased Arun was coming from Khadakwasala after his office hours. He was on Silver Plus Moped bearing No.MGF 3661 and was proceeding towards Prabhat Road, Pune. While the deceased was at Brickkiln of Shinde at Vithalwadi at Pune the motor vehicle P.M.T.bus No.MTF 9537 gave dash to the said Silver Plus Moped as a result of which the moped and deceased Arun fell down. The deceased was taken to Sasoon Hospital but ultimately succumbed to death. The said P.M.T. bus MTF 9537 was at the relevant time being driven by one Kashinath Gopal Dhole, the driver employed with

Pune Municipal Transport. On the death of deceased Arun his father Govind, mother Nalini, sister Jayashree and brother Dattatraya filed application No.96 of 1986 as against Pune Municipal Transport Corporation being the employer of Kashinath Gopal Dhole and Kashinath Gopal Dhole being the driver of P.M.T.bus No.MTF 9537 and they were opponent nos. 1 and 2 respectively. Opponent no.3 in the said application is Smt.Amruta Arun Bekanalkar who is wife of deceased Arun. By common judgment referred to above, the Member, Motor Accident Claims Tribunal, Pune has dismissed Application no. 96 of 1986 filed by the parents of the deceased and brother and sister of the deceased and, therefore, the applicants in application No.96 of 1986 have preferred First Appeal No.674 of 1990.

4. Application No.141 of 1986 was filed by Smt.Aruna Arun Beknalkar wife of deceased Arun for getting compensation in her favour. In the said application opponent no.1 was the Pune Municipal Corporation of city of Pune, Transport Manager, Pune Municipal Transport while opponent no.2 is the said driver Kashinath Dhole. Opponent No.3 is the Oriental Fire and General Insurance Company and Opponent Nos. 4 to 7 are the applicants from Application No.96 of 1986. The Member, Motor

Accident Claims Tribunal, Pune by the above referred common judgment has allowed Application No.141 of 1986 and directed Opponent Nos. 1, 2 and 3 to pay jointly and severally the amount of compensation of Rs.2,54,200/- together with interest at the rate of 12% p.a. from the date of application till realisation and proportionate cost to wife Amruta, the applicant in Application No.141 of 1986. The Insurance Company was further directed to share the liability limited to Rs.35,000/- and interest thereon and costs. On deposit of the amount of compensation the amount of Rs.2,00,000/- was directed to be invested in Fixed Deposit in Dena Bank, Bhavani Peth Branch, Pune-2 initially for a term of 5 years and on maturity of the said fixed deposit term of 5 years, it shall be renewed for another period of 5 years. The amount of interest accrued on the said fixed deposit was directed to be paid over to wife Amruta. Balance amount of compensation of Rs.54,200/- with interest and cost was to be paid in cash to the wife. The contesting opponents namely opponent nos.1, 2 and 3 from Application No.141 of 1986 shall bear their own costs. The Municipal Corporation and Kashinath Dhole namely opponent nos. 1 and 2 from application no.141 of 1986 being aggrieved with the said Award have filed First Appeal No.364 of 1990.

In the said appeal the applicant Amruta is shown as respondent no.1 while Oriental Fire and General Insurance is shown as respondent no.2. Respondent Nos. 3 to 6 are the parents, sister and brother of deceased Arun. It reveales that Motor Accident Claims Tribunal, Pune has accepted the claim of the wife and has granted award in her favour as stated above. The Oriental Fire and General Insurance Co. has not preferred any appeal as against the order passed against the said company.

5. Learned Counsel Shri Ketkar who appears for the appellants in First Appeal No.364 of 1990 has submitted that the accident had not taken place due to rash and negligent act of the driver Kashinath who was driving PMT Bus No.MTF 9537 at the relevant point of time. He also submitted that the quantum of compensation calculated by the Claims Tribunal is an erroneous one and claimed that the appeal be allowed and the claim made by Amruta, wife of the deceased, be dismissed. In Appeal No.674 of 1990, Shri Ketkar submitted that the learned Member, Motor Accident Claims Tribunal has rightly dismissed the application no.96 of 1986 and, therefore, first appeal no.674 of 1990 be dismissed.

6. Learned Counsel Shri Shah who appears for Amruta, wife of the deceased Arun, submitted that the Claims Tribunal, Pune has rightly held that the driver of PMT Bus namely Shri Kashinath Dhole was driving the said bus rashly and negligently and gave dash to Silver Plus Moped of the deceased from the back side and thus caused the accident as a result of which deceased Arun succumbed to death. He further submitted that the calculation of the compensation by the Claims Tribunal is just and proper and no interference at the hands of this Court is called for.

7. Learned Counsel Shri Nalawade who appears for the parents, sister and brother of the deceased in First Appeal No.674 of 1990 has submitted that the Claims Tribunal has committed a serious error in dismissing the Application No.96 of 1986 filed by the appellants in the said appeal. He submitted that as a result of death of deceased Arun the parents, sister and brother have suffered mental agony and shock and have losst the association of the deceased for future period and, therefore, the said appellants are also entitled for compensation, atleast to have some share in the compensation, which is to be awarded to wife Amruta. The learned counsel alternatively submitted that in any event

the mother of the deceased is the legal representative of the deceased Arun along with wife of the deceased Amruta and was, therefore, entitled to have a simultaneous share in the amount of compensation. Therefore, the learned Counsel submitted that the award passed by the Claims Tribunal may be modified to that extent and 50% of the amount of compensation be paid to the mother. In reply to the said argument of Shri Nalawade, Shri Shah, learned Counsel who appears for the wife Amruta submitted that the Claims Tribunal has rightly denied the claim made by the parents, sister and brother of the deceased. He further submitted that none of them and more specifically the mother of the deceased Arun was not dependent on the deceased at the relevant time, and since the mother was not dependent upon the deceased she was not entitled to claim any share in the compensation and, therefore, he submitted that the Claims Tribunal has also found that the parents and more specifically mother was not dependent on the deceased Arun and, therefore, has rejected their claim for compensation. He, therefore, supported the reasoning given by the Claims Tribunal and prayed that the First Appeal no.674 of 1990 be dismissed. On the basis of the pleadings of the parties and submissions made at the bar as stated

above the following points arise for my consideration.

1. Whether for the death of deceased Arun the rash and negligent driving of PMT Bus No.MTF 9537 driven by Kashinath Dhole is responsible?

2. Whether the amount of compensation as fixed by the Claims Tribunal is just and proper?

3. Whether dismissal of Application No.96 of 1986 is just and proper? Alternatively whether the dismissal of claim of Nalini Govind Beknalkar being the mother of the deceased was just and proper?

4. What order?

8. The fact that the accident had taken place on 23rd August, 1986 at about 4.30 p.m. near Brickklin of Shinde at Vithalwadi on Sinhagad Road is admitted between the parties. It is equally admitted that at that time the deceased was driving Silver Plus Moped bearing No.MFG 3661 and Kashinath Dhole, the driver of P.M.T.Bus was driving PMT Bus No.MFT 9537 is also admitted. It is further admitted that at that time the deceased was coming towards Pune from Khadakwasala and in the similar

way PMT bus was also coming in the same direction. The dispute is about the fact that according to the claimants the PMT bus gave a dash to Silver Plus Moped driven by the deceased Arun from the backside when the deceased was driving the said moped on the extreme left side of the said road. As against that, it is the case of Pune Municipal Transport Corporation that the deceased was driving the moped at the relevant time in front of the PMT bus No.MFT 9537 and that the deceased being inexperienced driver he got frightened due to the noise of the bus and lost control over the moped, as a result of which he slept and fell down. The PMT Bus driver immediately stopped the bus and has provided help to the deceased. Thus, according to the PMT there was no dash of PMT bus to the said Silver Plus Moped of the deceased and thereby they make out a case that the Corporation and its driver are not responsible for the said accident. Though the written statement filed by the P.M.T. and driver is common, their evidence is otherwise. However, in order to prove that the driver of the P.M.T. bus was negligent the claimants have examined two witnesses, namely, Tukaram Genu Chavare (Exh.45) and Vilas Laxman Kshirsagar (Exh.47). Witness Tukaram Chavare is a panch witness of the panchanama of scene of accident which was shown by

the driver Kashinath. From the said panchanama it is clear that spot of accident is near brickkiln of Shinde. The width of the road at the said place is 20 feet in East-West. The moped was lying at a distance of 5 feet towards east of the spot of accident and it had fallen at its left side. It is further found that the offending PMT bus was standing at a distance of 32 feet from the spot of accident towards East. Thus, both the vehicles were going by the left side. The panchanama shows that the left front portion of the bus was crushed and there were marks to that effect which show that the bus and Silver Plus Moped came in contact with each one. The witness Vilas Exh.47 is eye witness. He has stated that he was coming on a bicycle from Pune towards Vithalwadi on the same day of accident. He saw that near Shinde Brickklin the deceased Arun was coming on Silver Plus Moped by road from opposite direction. He also witnessed PMT bus following Silver Plus Moped. He stated that the bus was being driven in high speed and PMT bus was trying to overtake the moped and in an attempt to overtake the left side of the bus came in contact with the moped and the moped rider fell to his right side on the road and bus went ahead at a distance of 30 feet and halted. This witness was asked in the cross examination as to whether he

rendered any help to the deceased and since this witness has answered that he has not rendered any help to the deceased it was commented that the said witness was a got up witness. It was further stated that the statement of this witness was not recorded by the police and, therefore, this witness is not a genuine witness. However, I do not find any substance in the said submission. This submission was also made before the Claims Tribunal and the Claims Tribunal has rightly observed that only because the statement was not recorded by police and/or the witness has not rendered any help to the deceased it does not mean that the witness was not present at the spot and he had not seen the accident. The witness has come to the Court and has deposed on oath the accident and his testimony so far as description of the accident is concerned is unshattered. What is to be noted that witness Vilas (Exh.47) is not in any way related or interested in the deceased and/or any claimants and, therefore, his testimony is a most reliable testimony. That has been rightly accepted by the Claims Tribunal. What is to be noted is that the testimony of panch witness Tukaram (Exh.45), panch of scene of accident, both are corroborative each other and thereby it is revealed that the bus had come in contact with the moped as a result of which

the moped has fallen down and deceased suffered the injuries. What is to be noted that the bus has halted at the distance of 32 feet. That shows that the bus was in speed and inspite of the fact that driver of the said bus has seen the deceased being falling was not able to control the said bus immediately. That speaks volume about the speed of bus. As against this evidence of the claimants, the driver has entered into the witness box and surprisingly the deposition and story which has been deposed by the driver Kashinath is otherwise than the story as is reflected in the written statement. In the written statement it has been stated that because of the noise of the vehicle deceased got frightened and as he was inexperienced driver he himself has fallen down without there being any dash by the PMT bus MTF 9637. As against that driver Kashinath has deposed that at the relevant time the deceased was driving the moped on the left side of the road but he was in front of the PMT bus and in that circumstance the bus was taken to the right side and it was being overtaken by the driver Kashinath and he was overtaking the moped and in that situation the moped has suddenly come to the right side and dashed to the bus. Thus, it will be seen that the story of overtaking the moped and then in that situation moped suddenly

coming to the right side and dashing to the left side of the bus is absolutely a new story which has been for the first time deposed in the witness box. The Claims Tribunal has rightly taken cognisance of this aspect and has disbelieved the evidence of the Corporation and the driver. This Court after going through the judgment and evidence also finds that findings recorded by the Claims Tribunal on the point of rashness and negligence are just and proper and no interference is called for. This court further finds that it was rash and negligent driving of the driver Kashinath Dhole which was responsible for the accident in question and for the death of deceased Arun.

9. Now coming to the question of compensation, the father, mother, brother and sister have claimed the compensation on account of mental torture, agony, pains and loss of consortium and monetary loss suffered on account of death of the deceased. It is to be noted that the compensation for mental agony, physical sufferings can be claimed if the deceased had suffered pains and sufferings before his death. It is well settled that on account of mental agony, pain and sufferings suffered by the claimants, no compensation can be claimed. As has been held in the case of N.Sivanmal and others Vs.

Managing Director, Pandian Roadways Corporation and another reported in A.I.R.1985 S.C.106 and, therefore, the claimants father, mother, brother and sister are not entitled to get compensation for their mental sufferings, agony and physical sufferings. It is revealed from the evidence that the father was getting monthly pension of Rs.1735/- brother Bhagwan alias Dattatraya is in service with the State Bank of India and sister Vidya is serving in Bank of Baroda and thus the father, brother and sister of the deceased Arun are not dependents on the deceased Arun. It is further to be noted that the father, brother and sister of the deceased Arun are not legal representatives as per Hindu Succession Act. Therefore, the claim of father, brother and sister of the deceased Arun viewed from any angle i.e. on the basis of dependency and/or on the basis of legal heirship is not tenable and rejection of the said claim by the Claims Tribunal is justified. The question remains about the mother because the Claims Tribunal had found that the mother is a legal representative of the deceased in view of the provisions of Hindu law. Even a perusal of section 8 read with list of Class I heirs it is clear that the mother is the heir of deceased Arun and, therefore, is a legal representative of deceased Arun along with the wife

Amruta. Therefore, on the death of Arun as provided under sec.110A of the Motor Vehicles Act, 1939, it is the mother Sushila and wife Amruta of the deceased being his legal representatives are entitled to file the application. However, the claim of the mother was rejected by the Claims Tribunal on the ground that she is not dependent on the deceased. Therefore, the question arises whether the dependency is one of the factor for the purpose of filing the application under sec.110A of the Motor Vehicles Act. The learned Counsel for the applicants and even for the Insurance Company Shri Gangal submitted that dependency is a factor which can be considered for the purpose of deciding the quantum of compensation. The learned Counsel for the wife Amruta submitted that since the mother was not dependent on the deceased she is not entitled for any compensation. As against that Shri Gangal initially tried to rely upon a judgment in Municipal Corporation of Gr.Bombay and Santan Marshall Fernandes reported in 1986(2) Bom.C.R.474. He submitted that the test has been considered by this Court relying upon the Full Bench judgment of Punjab and Hariyana High Court in the matter of Prakash Chand Vs.Pal Singh reported in A.I.R.1985 Punj.329. It is to be noted that in that case the application was filed by maternal aunt of the

deceased and at the time of death of the deceased in that case she was not dependent on the deceased. In such case the test which has been approved by this Court from the Full Bench judgment of Punjab and Haryana High Court is as under:

> "In the case in hand, the person deceased Dharam Pal has left behind no dependent. The deceased, as his name suggests, is a Hindu by religion and so his estate would be inheritable in accordance with the provisions of the Hindu Succession Act. Section 8 of the Hindu Succession Act, 1956 deals with the intestate succession to a male. According to the said section, brothers fall in category (b). By virtue of the said section, person falling in a given category succeeds equally and persons falling in (a) category excludes the persons mentioned in category (b) and so forth. It is nobody's case that deceased had left behind any of the persons falling in category (a). It is also nobody's case that the deceased had left behind any person other than applicant - appellant falling in category (b). In view of this, the applicant-appellant would fall in such category of legal representatives as would

> be entitled to enjoy the damages that may be awarded by the Tribunal. The damages in this regard would be referable to the loss to the estate of the deceased which would be equal to the lost earnings for the lost years of the deceased's life. In other words, the possible saving of the deceased after accounting for his personal expenditure multiplied by a suitable multiplier having regard to the years by which the working life of the deceased had been cut short by the accident."

Thus, it reveals that when the legal representative is not a dependent on the deceased then in that circumstance even though the claimant falls in the category of legal representative he is entitled to succeed to the estate of the deceased and in that view the damages will be the possible savings of the deceased after accounting for his personal expenditure multiplied by suitable multiplier having regard to the years by which the working life of the deceased had been cut short by the accident and thus relying upon this Shri Gangal submitted that by following this method the compensation will be arrived at and 50% of that can be given in favour of the mother apart from the

compensation which has been granted in favour of the wife.

10. Submission of Shri Gangal though attractive cannot be accepted. In the said judgment this Court had tried to reconcile the provisions of section 1A of the Fatal Accidents Act and the provisions of section 110-A sub-sec.(1) which provide that the application can be filed by the legal representative. In para 12 of the said judgment, it is observed as under:

> "....However, if the heir is a person who is not named under section 1A of the Fatal Accidents Act, then the compensation claimable could be for the loss of estate only. "

In short, the legal representative of the deceased who is not falling under the category of heir which has been stated in sec.1A of the Fatal Accidents Act has been considered to be entitled to the damages on the basis of heirship to the estate of deceased as observed in the said judgment. However, the mother in the present case is not falling in that category. On the contrary the mother is covered by section 1A of the Fatal Accidents Act. Apart from that the maternal aunt

in the case referred to above was falling in Class II heirs as has been analysed in that case. However, in the present case the mother is not class II heir and she is class I heir and she is entitled to inheritate property simultaneously with the wife of deceased and, therefore, if the question of loss of association with the deceased is concerned she is entitled to simultaneous share in the property and in that circumstance the question arises what should be the appropriate compensation and what would be the proportionate compensation. It is not disputed at the bar that the wife and mother are class I heirs as per Hindu Succession Act and legal representative. The finding of the Claims Tribunal is to that effect. Now the question is what should be the apportionment of compensation amongst the wife Aruna and mother Shalini. It is to be noted, and as has been analysed by the Claims Tribunal that the mother was not dependent on the deceased. On the contrary evidence shows that after the marriage deceased Arun and wife Amruta were staying at Khadakwasala separately and there is no evidence on record to show that any amount was being paid by deceased Arun to the mother and parents and, therefore, it is one aspect to conclude that the mother was not dependent and that finding is proper

finding and does not require any interference by this Court. However, it requires to be stated that being Class I heir she is legal representative and is entitled to some share in such capacity. What is that share is the question. The learned Counsel for the wife stated that in that circumstances she is not entitled to share but the learned counsel for the Insurance Company stated that the ratio should be 60:40. He submitted that even in cases where class I heirs are left by the deceased namely wife, sons and daughter the Claims Tribunal can exercise appropriate discretion taking into consideration the ages of class I heirs and make apportionment of compensation. The same system may be adopted in the present matter also.

11. I find substance in the submission made by the learned Counsel and, therefore, I will consider the said factor for the apportionment. It may be stated that age of Aruna at the time when the accident had taken place was 25 years and the accident had taken place within a period of 5-6 months after her marriage with deceased Arun. It is further to be noted that out of the total income 1/3 amount as has been held by Claims Tribunal was being spent on her. The age of Shalini at that time was 53 years and she was having support of her

husband Govind who was getting pension. Not only that since the husband was getting pension even after the husband is expired she is entitled to get family pension under the rules. Therefore, at no point of time she would have been dependent on the deceased. However, taking into consideration the fact that she is a legal representative class I I find that the apportionment of compensation at the ratio of 75: 25 will be proper. Accordingly I record my findings.

12. Then comes the question of quantum of compensation. In this respect I find that there is evidence of Manohar Joshi, Head Clerk in Administration Branch of Central Water and Power Research, Khadakwasala that last drawn salary of the deceased Arun was Rs.2174.75 and out of that the Claims Tribunal has taken Rs.1200/- as the monthly dependency of wife Amruta and Rs.800/- to be the expenses of the deceased out of the total earnings of Rs.2000/- It has also been rightly considered that life should have been 70 years and he could have served for 27 years more. Further appropriate deductions for uncertainties of life have been given by the Tribunal and lateron the multiplier was expected to be that of 15 years. Taking into consideration the age of deceased being

30 years at the time of accident the multiplier of 18 is proper and just. Therefore, I find that the calculation of compensation as has been done by the Claims Tribunal is just and proper and no interference is called for in that respect. Even at the bar also there is no serious quarrel about the compensation being calculated by the Claims Tribunal. I, therefore, pass the following order:

. Appeal Nos. 364 of 1990 and 674 of 1990 are partly allowed. It is hereby directed that from the amount of compensation which has been fixed by the Claims Tribunal 25% amount along with interest shall be paid to mother of the deceased Shalini and rest of the amount shall be paid over to wife Amruta of the deceased Arun. Rest of the findings are confirmed.Appeal filed by Pune Municipal Transport being First Appeal No.364 of 1990 is hereby dismissed with costs.

(S.B.MHASE J.)